



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
www.blm.gov/ca/barstow

Nursery Products LLC Access Road (CA-680-2009-59) (EA) Decision Record December 2011

DECISION

The Bureau of Land Management (BLM) has completed an environmental assessment (EA) for a proposed action to upgrade an existing open route and grant a non-exclusive right-of-way for this existing access road over public land near Hinkley in San Bernardino County to a composting facility approved by the County to be located on adjacent private land. A copy of this EA and associated supporting documentation has been posted to the BLM Barstow Field Office website from September 6, 2011 through October 6, 2011 to allow thirty-days for public comments.

Considering the agency purpose and need, public comments, the content of the EA, the enclosed FONSI, and supporting project records, it is my decision to approve and authorize improvements to the access road shown on the attached/enclosed map and a non-exclusive FLPMA right-of-way to Nursery Product LLC for an access road to private property.

Based on public comments on the EA, the BLM would like to clarify the following information:

1. Well water will be used for the road construction and dust suppression. The source of the well water is an existing commercial vendor. The amount of water purchased from the commercial vendor will not exceed the commercial vendor's authorized water usage. No reclaimed water will be used for the road construction or for dust suppression. Mitigation measures identified in Section 5.1.4 of the Environmental Assessment stated that desert tortoise habitat loss would be mitigated at a 3:1 ratio. The CDCA Plan as amended requires this compensation at a 5:1 ratio within the Desert Wildlife Management Area (DWMA). The BLM is clarifying that the mitigation for desert tortoise habitat loss will be at a 5:1 ratio. This mitigation land will be habitat that supports both desert tortoise and Mohave ground squirrel.
2. The CDCA Plan as amended does not require mitigation land for desert Mohave ground squirrel. The WEMO Plan places a one percent cap on the amount of new ground disturbance allowed within the Mohave Ground Squirrel Conservation Area. There is capacity for the approved road improvement without exceeding the one percent cap within the Mohave Ground Squirrel Conservation Area

CONSISTENCY WITH OTHER CDCA PLAN AMENDMENTS

This action is provided for by the Federal Lands Policy and Management Act, which provides for access across public lands to private property, consistent with other relevant laws, policies and plans.

The California Desert Conservation Area (CDCA) Plan, 1980, as amended, including the West Mojave Bioregional Plan Amendment (West Mojave Plan, 2006) is the Bureau of Land Management (BLM) land use plan for the affected area. The CDCA Plan has identified public lands in this area as Multiple-Use Class Limited, which provides for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive resources are not significantly diminished.

The area around this right-of-way has also been identified as critical habitat for the federally-threatened desert tortoise by U.S. Fish and Wildlife Service (USFWS), and public lands have been identified as a Desert Wildlife Management Area (DWMA) by the West Mojave Plan for the conservation of the desert tortoise and the State-listed Mojave ground squirrel. The area is known to be inhabited by desert tortoise, and habitat is suitable for both species, however the roadway itself has long been in use. Several conditions have been imposed to assure that these sensitive resources are not diminished during upgrade and future use of this route to access the Hawes Composting Facility.

The proposed action, as conditioned herein, conforms to all requirements in the CDCA Plan, as amended.

RATIONALE FOR THE DECISION:

My rationale for this decision follows:

The CDCA Plan has identified public lands in this area as Multiple-Use Class Limited, which provides for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive resources are not significantly diminished.

Under FLPMA, BLM has the authority to issue right-of-ways to entities such as Nursery Products LLC to provide access to private property.

An improved road is necessary for Nursery Products to have adequate access considering the types of vehicles requiring access. Additionally the overall environmental effects to resources would be reduced by allowing the upgrade to the existing road.

Public support for this project is mixed. BLM has encouraged the public to participate in this environmental review process. The Environmental Assessment was posted on BLM's website from September 6, 2011 to October 9, 2011 for thirty days of public review and comment. BLM received several comment letters on the Environmental Assessment. Following is a summary of the comments:

Air Resource: Commenters were concerned with vehicle emissions, VOCs, and PM-10 and requested a Fugitive Dust Control Plan for the project.

Water Resource: Commenters were concerned with the use of 1,000 gallons a day of water. Some commenters believe that this figure is not accurate. Commenters were concerned that an adequate water supply is not available for this project. A commenter stated that the water source for the road construction is in conflict with the water source in the County's EIR, and under litigation. This commenter also stated that the EA identified 2 water sources in the EA, both offsite and the use of recycled waste water. This commenter stated that the offsite source is not identified.

A comment was received noting that a National Elimination Discharge Elimination Permit, a Streambed Alteration Permit, a Waste Discharge Requirements Permit and Best Management Practices may be required for this project. There were also expressed concerns about degradation to

groundwater and runoff and drainage from the road. One commenter was concerned about the location and route to a wastewater facility.

Biological Resources: One commenter requested the BLM consider animal migration. One commenter was concerned about the potential impacts of a retention pond to birds. One commenter stated that the EA inaccurately stated that Mohave ground squirrels have not been located within 5 miles of the site. This commenter stated that the California Natural Diversity Database shows 4 occurrences of the Mohave ground squirrel within 5 miles of the project location. This commenter stated that the BLM must determine if this species is present onsite and complete a new analysis for impacts to this species.

Wastes: Commenter was concerned about waste material related to the truck traffic and one commenter noted that a spill plan for hazardous material spills and runoff is needed. A commenter noted that waste disposal will be required.

Road Design: One commenter expressed concern that the road design does not include pull offs. Commenters stated that culverts will be required and discussed various designs. One commenter stated that the EA should analyze the impacts to paving the road (as compared to a dirt road) with a focus on flash flooding and erosion. This commenter stated that mitigation for the desert tortoise and other endangered species and vegetation is needed.

General Comments: One commenter requested that a note that Hawes compost failed. One commenter requested that BLM consider all comments and documents submitted with comments and that BLM add these comments to the official record. One commenter stated concern with weed control. Commenters were concerned with the number of trucks, the traffic, the truck markings (placard) and health and safety related to truck use and truck traffic. One commenter was concerned with the wind limitation for mixing. One commenter was concerned about the County's EIR being in litigation. Two commenters asked the BLM to consider various comments on the County's EIR.

NEPA: A commenter stated that an Environmental Impact Statement is required. One commenter is concerned that the EA only reviews the route and not the entire project. This commenter would like a NEPA/CEQA joint document to be produced.

The BLM has considered each of these comments prior to making this decision.

PLAN MONITORING, EVALUATION, AND ADAPTIVE MANAGEMENT

Monitoring evaluation and adaptive management requirements, if any, will be identified in the lease offered to Nursery Products LLC.

MITIGATION MEASURES:

All mitigation measures identified in Chapter 5 of the Environmental Assessment are required as a part of this decision. All practicable means to avoid or minimize environmental harm by the plan have been adopted.

ADMINISTRATIVE REMEDIES

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of Interior, Board of Land Appeals (Board) in strict compliance with the regulations in 43 CFR Part 4. Notices of appeal must be filed in this office within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments, or briefs must also be served upon the Regional Solicitor, Pacific Southwest Region, U.S. Department of Interior, 2800 Cottage Way, E-1712, Sacramento, CA 95825.

CONTACT PERSON:

For additional information concerning this decision or the BLM administrative review process contact Birgit Hoover, Barstow Field Office, 2601 Barstow Rd., Barstow, CA, 92311; telephone (760) 252-6000.

DECISION

It is my decision to approve, subject to the terms, conditions, stipulations, mitigation measures, and environmental protection measures reflected in this Decision Record: 1) a new ROW grant to Nursery Products LLC for the non-exclusive use of Route KHI6425 including the necessary hardening and upgrade of said Route.

Approved:

for [Signature]
Authorized Officer
Field Manager, Barstow Field Office, Roxie C. Trost

1-13-2012
Date